

Representative David Ure proposes the following substitute bill:

NONPARTICIPATING TOBACCO

MANUFACTURER'S FEE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

LONG TITLE

General Description:

This bill modifies the Cigarette and Tobacco Tax and Licensing Act by imposing an equity assessment on nonparticipating manufacturer cigarettes.

Highlighted Provisions:

This bill:

- defines terms;
- levies an equity assessment of 1.75 cents per cigarette on nonparticipating tobacco product manufacturers; and
- designates cigarettes in violation of this section as contraband goods.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

59-14-213, as last amended by Chapters 52 and 175, Laws of Utah 2002

59-14-214, Utah Code Annotated 1953



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-14-213** is amended to read:

59-14-213. Contraband goods.

(1) Any cigarettes in violation of any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-211 [or], Subsection 59-14-212(1), or Section 59-14-214 are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.

(2) Any goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.

(3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of Subsection 59-14-408(2) are contraband goods and may be seized in accordance with Subsections (1) and (2).

Section 2. Section **59-14-214** is enacted to read:

59-14-214. Nonparticipating manufacturer equity assessment.

(1) As used in this section, "nonparticipating manufacturer" means a tobacco product manufacturer, as defined in Subsection 59-22-202(9), that is not a participating manufacturer within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in Subsection 59-22-202(5).

(2) (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette, for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as required under Section 59-14-205.

(b) The equity assessment imposed by this section is in addition to all other assessments, fees, and taxes levied under existing law.

(c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.

(d) Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by Section 59-14-204.

(3) The purposes of this equity assessment are:

(a) to recover health care costs to the state imposed by nonparticipating manufacturers;

(b) to prevent nonparticipating manufacturers from undermining the state's policy of

57 reducing underage smoking by offering cigarettes for sale substantially below the prices of
58 cigarettes of other manufacturers;

59 (c) to protect funding, which is reduced as a result of the growth of nonparticipating
60 manufacturer cigarette sales, for programs funded in whole or in part by payments to the state
61 under the Master Settlement Agreement, as defined in Subsection 59-22-202(5);

62 (d) to recoup settlement-payment revenue lost to the state as a result of
63 nonparticipating manufacturer cigarette sales; and

64 (e) to fund enforcement and administration of:

65 (i) Section 59-14-408;

66 (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers;

67 and

68 (iii) the equity assessment imposed by this section.

69 (4) (a) Each manufacturer, distributor, wholesaler, or retail dealer who under Section
70 59-14-205 affixes a stamp to a package of cigarettes, shall report monthly to the commission
71 for each place of business, the number and denominations of stamps affixed to individual
72 packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor,
73 wholesaler, or retail dealer in the preceding month, including the manufacturer and brand
74 family.

75 (b) A person required to file a report under this section is subject to the penalties under
76 Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or
77 fraudulent information.

Legislative Review Note
as of 2-13-04 4:49 PM

This bill requires all nonparticipating tobacco manufacturers to pay an equity assessment fee on cigarettes sold in this state. This assessment is in addition to the state's escrow requirements for nonparticipating manufacturers. The application of the assessment to nonparticipating manufacturers only may violate the Equal Protection Clause and Due Process Clause of the 14th Amendment to the U.S. Constitution. The statute may withstand an equal protection and due process challenge if the court determines that the Legislature's treatment of nonparticipating manufacturers is rationally related to a legitimate governmental interest.

Office of Legislative Research and General Counsel